

1 JON M. SANDS
2 Federal Public Defender
3 District of Arizona
4 250 N. 7th Avenue, Suite 600
5 Phoenix, Arizona 85007
6 Telephone: (602) 382-2700
7 MARK RUMOLD
8 Cal. Bar No. 279060
9 JAMI JOHNSON
10 NY Bar No. #04823373
11 mark_rumold@fd.org
12 Assistant Federal Public Defender
13 Attorneys for Defendant

14
15 IN THE UNITED STATES DISTRICT COURT
16
17 DISTRICT OF ARIZONA

18 United States of America,
19
20 Plaintiff,
21
22 vs.
23 Donald Day, Jr.,
24
25 Defendant.

No. CR-23-08132-PCT-JJT

**DEFENDANT'S OPPOSITION TO
GOVERNMENT'S MOTION IN
LIMINE RE: DNA TESTIMONY AND
NOTICE OF INTENT TO RELY ON
FED. R. EVID. 703**

26 Mr. Day respectfully urges the Court to deny the Government's motion in limine
27 concerning DNA testimony (Dkt 141).

28 The government seeks a pretrial ruling that "the government does not need to call
the FBI DCU biologists at trial to satisfy the defendant's general Sixth Amendment
rights." Mot. at 8.

Such a ruling would be premature and, at this point, advisory. Whether the
testimony of FBI DCU biologists is necessary to comply with the Sixth Amendment
depends, in large part, on the evidence the government intends to admit and the testimony
provided by Ms. Plaza at trial.

1 For example, if Ms. Plaza testifies that she did not supervise the FBI DCU
2 biologists; that she did not review every test the biologists performed; and had no
3 knowledge or control over the procedures that were used to conduct the tests—then, under
4 those circumstances, the testimony of the FBI DCU biologists would likely be necessary
5 to comply with the Sixth Amendment. *See Bullcoming v. New Mexico*, 564 U.S. 647, 661
6 (2011).

7 Although Mr. Day does not now anticipate objecting to the admission of DNA
8 evidence on Sixth Amendment grounds, that could change, depending on Ms. Plaza's
9 testimony at trial. And, because Mr. Day cannot say with certainty what that testimony
10 will be, he cannot judge whether admission of DNA analysis based on Ms. Plaza's
11 testimony alone would violate the Sixth Amendment.

12 Accordingly, the government's request is premature. The Court should deny the
13 motion.

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15 Respectfully submitted: May 9, 2025.

16 JON M. SANDS
17 Federal Public Defender

18 s/Mark Rumold
19 MARK RUMOLD
20 Asst. Federal Public Defender